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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 211

CENTAUR CONSTRUCTION COMPANY, INC.,
Petitioner,

vs.

THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.

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SUPREME COURT OF THE UNITED STATES

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No. 211

CENTAUR CONSTRUCTION COMPANY, INC.,
Petitioner,

vs.

THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.

Petition

The petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Claims entered on April 4, 1949 (R. 30), based on a majority opinion. (R. 26) There was a dissenting opinion (R. 30) and the Court's order entered on May 2, 1949 (R. 30) denying the petitioner's motion for a new trial.

Statement

The facts alleged in the petition in the Court of Claims (R. 1-26) are briefly these:

The petitioner corporation is a construction contractor and engineer (R. 1), and as such during the recent world war and within the statutory period of September 16, 1940

and August 14, 1945, as provided in Sec. 1 of the Act of August 7, 1946, 60 Stat. 902, Public Law No. 657, 79th Congress, ch. 864, 2d Session (App. 18-20), hereafter referred to as the Relief Act, after successful bids and award of contracts to it, performed five contracts for the United States at a total loss of $311,421.78 (R. 9, 18-21). The loss was suffered without fault or negligence on the part of petitioner and by causes beyond its control. (R. 6, 7, 9.)

The principal amount of the loss was suffered in performing Contract No. T-22cg-1539, dated March 1, 1941, and completed January 22, 1944 (R. 7) in the construction of Shipways and Dry Dock facilities at the United States Coast Guard Depot, Curtis Bay, Maryland (R. 6.) At the time petitioner prepared and submitted its bid, labor, material and transportation costs were substantially normal, and on this basis, the bid was submitted. (R. 7, 8.) After the awarding of the contract the United States rearmament program was greatly accelerated, and on December 7, 1941, the United States went to war, causing a dislocation of the economy of the country, and the labor and material markets suffered such an upset as was never anticipated. Subsequent to the entry of the United States into war and while petitioner was performing the contract, wages increased as much as 108⅓ per cent; piledrivermen who were receiving 90¢ per hour before the war, afterwards were receiving $1.87½ per hour; carpenters receiving $1.25 per hour before the war, were afterwards receiving $1.87½. This same increase was true in every category of labor. (R. 10-13.)

The same abnormal conditions as to cost of labor applied to the cost of materials. (R. 14.)

The same abnormal conditions also contributed to the losses suffered based on the delay in the delivery of materials. (R. 13-14.)

Thereafter under date of October 26, 1942, petitioner filed an application for relief under the provisions of the "First War Powers Act" (Act of December 18, 1941, ch. 593, Title II, Sec. 201, 55 Stat. 838; Sec. 611, Title 50 U. S. C.) with the contracting officer of the United States Coast Guard. The application was denied. (R. 16). Petitioner appealed to the Secretary of the Navy, under whose jurisdiction the United States Coast Guard was at the time, who denied the appeal. (R. 16.)

The relief Act as legislation under consideration in Congress was designated as "War Contract Hardship Claims." (App. 21-24.) The intent and purpose of this relief Act is to grant relief to petitioner and other contractors in like situations, suffering hardship and financial loss without fault or negligence on their part in performing war contracts.

Invoking the provisions of the relief Act, petitioner on February 7, 1947, prepared and filed a claim for relief (R. 16-18) with the United States Coast Guard under the Treasury Department. On April 21, 1947, the claim was denied (R. 16, 24, 25), from which denial petitioner did not appeal to any court.

Thereafter, on September 27, 1948, petitioner sued in the United States Court of Claims, invoking the general jurisdictional statute of the Court, Sec. 1491, Title 28 U. S. C., formerly Sec. 250, Title 28 U. S. C. (Judicial Code Sec. 145), hereafter referred to as the jurisdictional Act, as amended by the provisions of the Act of June 25, 1948, 62 Stat. 869, Public Law No. 773, 80th Congress, ch. 646, 2d Session; Sec. 37, Title 28 U. S. C. (page 137), (App. 18-20), hereafter referred to as the amendatory Act, making the relief provisions of the relief Act applicable to the general jurisdiction of the Court of Claims, effective September 1, 1948, Sec. 38. Title 28 U. S. C. (R. 1-4).

As a defense respondent made motion to dismiss the petition upon the ground that the Court of Claims lacked jurisdiction over petitioner's claim because it was filed in the Court of Claims more than six months after denial of the claim by the Department. (R. 25.)

The court in a majority opinion of three judges sustained the motion and dismissed the petition, two judges dissenting. (R. 26-29.)

On April 25, 1949, the petitioner filed a motion for a new trial and on May 2, 1949, the court denied the motion. (R. 30.)

Question Presented

Under the provisions of the relief Act entitled an Act "To Authorize Relief in Certain Cases, Where Work, Supplies or Services Have Been Furnished for the Government Under Contract During the War" (App. 18-20), petitioner filed application for relief with the Government Department for financial losses suffered in performing war contracts as provided therein. Petitioner's application was denied and it did not file an appeal with a Federal district court or any court within six months thereafter.

On September 1, 1948, the amendatory Act entitled an Act "To revise, codify, and enact into law title 28 of the United States Code and Judiciary)" (App. 20, 21), became effective, making applicable the relief provisions of said relief Act to the general jurisdictional statute of the Court of Claims. The amendatory Act also repealed the requirement of the relief Act to appeal to a Federal district court within six months after the decision of the department, of claims in excess of $10,000, and the amendatory Act provided that such appeals be made to the Court of Claims after the effective date of amendatory Act on September 1, 1948. On September 27, 1948, petitioner sued in the Court of Claims invoking the general jurisdiction of

the court, as amended by the application of the relief provisions of the relief Act and within the provisions of the statute of limitations of six years, Sec. 262, Title 28 U. S. C., which will be referred to hereafter as the statute of limitations, petitioner's cause of action having accrued on January 22, 1944. (R. 1-4, 7)

The question is, whether petitioner's failure to appeal from a decision of the department denying its claim to a Federal district court, or the Court of Claims, within six months thereafter, is a bar to petitioner's suit brought in the Court of Claims on September 27, 1948, under the Court's general jurisdiction, as amended by the application of the relief provisions and within six years after the accrual of petitioner's cause of action and/or within thirty days after the effective date of the amendatory Act, September 1, 1948, and after the repeal of the requirement to appeal to a Federal district court.

Reasons for Granting the Writ

The decision below was by a mere majority of three judges, two judges dissenting. (R. 26, 29, 30.)

The general importance of the decision in the settlement of claims against the Government arising out of the performance of contracts in the recent world war, we believe is similar to *United States* v. *Cors,* 69 S. Ct. 1086, 1088, in which this Court granted the writ of certiorari.

The general importance of the decision further appears in the construction of the relief Act and amendatory Act as they relate to each other and to the general jurisdictional Act of the Court of Claims and the statute of limitations applicable thereto.

Indicating that there are a number of claims arising under the relief Act and amendatory Act, the Court of Claims on May 27, 1949, issued a *per curiam* Memorandum and Order stating "There are now pending in the Court of

Claims a number of cases brought pursuant to the Lanham Act (60 Stat. 902)", which is the Act of August 7, 1946, Public Law No. 657, 79th Congress, ch. 864, 2d Session, referred to throughout herein as the relief Act. (See Memorandum and Order, App. 30-32.)

In Senate Report No. 1669, 79th Congress, 2d Session, reporting the relief Act for passage, it is stated: "As a result a number of claims which were in process at the time of the surrender of the Japanese Government * * *" (App. 24, 27). The same statement is contained in House Report No. 2576, 79th Congress, 2d Session, reporting the relief Act. (App. 21, 22.)

In Senate Report No. 1559, 80th Congress, 2d Session, reporting the amendatory Act for passage, it is stated: "Cases are just beginning to arise under the statute." (App. 28, 29.)

That there are many claims involving large amounts there is no doubt.

We believe that there is no dispute as to the merits of the claim alleged in the petition in the amount of $311,421.78. The motion to dismiss the petition admits this and all reasonable and fair inferences to be drawn therefrom. *Pullman Car Co.* v. *Missouri Pacific Co.*, 115 U. S. 587, 596.

The majority opinion below in the literal construction of the remedial statutes involved by their strict letter is in flat, direct and open conflict with principles of law repeatedly declared in the decisions of this Court and other authorities. The principles are that remedial statutes granting relief, as here, must receive a liberal, and not a literal, construction and their strict letter must yield to the spirit and purpose of the remedial statutes to give effect to the intention of Congress to grant relief, the main and only purpose of their enactment. *Fleischman Construction Co.*

v. *United States*, 270 U. S. 349-360; *Holy Trinity Church* v. *United States*, 143 U. S. 457, 459-466; *Lau Ow Bew* v. *United States*, 144 U. S. 47, 59; *Hawaii* v. *Mankichi*, 190 U. S. 197, 212.

The petitioner's action commenced in the Court of Claims after expiration of the limitation of six months provided in the relief Act and within thirty days after the enactment of the amendatory Act and within six years from the time the cause of action accrued, is not barred. *United States* v. *St. Louis, San Francisco & Texas Ry. Co.*, 270 U. S. 1, 3; *New York Central Railroad Co.* v. *Wheeling Can Co.*, 275 U. S. 490.

The majority opinion is also in direct conflict with the general jurisdictional statute of the Court of Claims as amended by the amendatory Act making the relief provisions of the relief Act applicable to the Court's general jurisdiction and the statute of limitations of six years applicable to the Court, authorizing petitioner to sue in that Court under the general jurisdiction, as amended by the relief provisions, within six years from the accrual of the cause of action on January 22, 1944, the date of the completion of the contract (R. 7).

Conclusion

The several questions presented: The jurisdictional statute as amended by the amendatory Act making the relief provisions of the relief Act applicable thereto with respect to the settlement of claims against the Government, arising out of the recent war, the effect upon the statute of limitations, the time in which suits may be commenced, and steps taken in their prosecution, and the proper interpretation and application of the Acts involved, are each of general importance and their correct interpretation should be finally settled by this Court.

WHEREFORE, it is respectfully submitted that the writ of certiorari should be granted.

Respectfully submitted,

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BRIEF IN SUPPORT OF PETITION

Opinion Below

The majority and minority opinions of the Court of Claims (R. 26, 30) are reported in — Ct. Cl. —; 83 F. Supp. 351.

Jurisdiction

The judgment of the Court of Claims was entered April 4, 1949 (R. 30) and its order denying petitioner's motion for a new trial was entered May 2, 1949 (R. 30). Jurisdiction is conferred on this Court by Sec. 1255, Title 28 U. S. C. (formerly Sec. 3 (b) of the Act of February 13, 1925, 43 Stat. 936, 939, as amended by the Act of May 22, 1939, 53 Stat. 752).

Statement

The essential facts are stated in the preceding petition (p. 1-4).

Question Presented

The question presented is stated in the preceding petition (p. 4-5).

Specifications of Errors to Be Urged

The Court of Claims erred:

1. In failing to hold that petitioner having sued in the Court of Claims on September 27, 1948, under its general jurisdiction, as amended by the application of the relief provisions of the relief Act, and after the effective date of the amendatory Act, September 1, 1948, and within the statute of limitations of six years after its cause of action accrued, petitioner's action was not barred because of its failure to appeal within six months from the decision of the department to a Federal district court, or the Court of claims.

2. In failing to hold that petitioner having sued in the Court of Claims on September 27, 1948, within thirty days after the effective date of the amendatory Act, September 1, 1948, that petitioner's cause of action was not barred.

3. In the literal construction, rather than a liberal construction of the remedial Acts involved, which literal construction frustrates and defeats the spirit and purpose of the Acts to grant relief.

4. In failing to apply a liberal construction to the remedial Acts involved to carry out the intention of Congress to grant relief.

5. In holding that petitioner's action was barred because not filed in Court within six months after the decision of the department on the claim.

6. In sustaining respondent's motion to dismiss the petition and dismissing the petition.

Summary of Argument

Certiorari should be granted because of the general importance of the decision in the settlement of claims against the Government in the performance of contracts arising out of the recent world war.

Petitioner performed five contracts for respondent in the statutory period of the relief Act. It suffered a loss of $311,421.78.

After the effective date, September 1, 1948, of the amendatory Act, making the provisions of the relief Act applicable to the general jurisdiction of the Court of Claims, petitioner could sue in the Court of Claims, as it did, on September 27, 1948, within the six-year statute of limitations from the date of the accrual of its cause of action, invoking the general

jurisdiction of the Court, as amended by the relief provisions of the Relief Act, notwithstanding it did not sue or appeal to a Federal district court or the Court of Claims within six months after the decision by the department. Or petitioner could sue within thirty days after the effective date of the amendatory Act, as it did do on September 27, 1948.

The majority opinion is based on a literal construction of the relief and amendatory Acts, which thwarts and defeats the spirit and purpose of the Acts to grant relief.

The relief Act and amendatory Act, being highly remedial, the Court, instead of a literal construction of the Acts, should have broadly construed them, and if necessary, the letter of the Acts should yield to their spirit and purpose to grant relief.

ARGUMENT

I

Certiorari Should Be Granted

The decision below was by a mere majority of three Judges, two Judges dissenting (R. 26, 29, 30). The decision is of general importance in the settlement of claims in the performance of contracts arising out of the recent world war, and the decision of the case at bar is believed to be analogous in importance to the *United States* v. *Cors*, 69 S. Ct. 1086, 1088, in which this Court granted certiorari, stating: "The importance of that decision in the settlement of claims arising as a result of the requisitioning program during the period of recent hostilities led us to grant the petition for certiorari."

For further argument, see Reasons Why Certiorari Should Be Granted (Petition, pp. 5-7).

II

Petitioner Sued in the Court of Claims on September 27, 1948, After the Effective Date of the Amendatory Act, Invoking the General Jurisdiction of the Court, as Amended by the Application of the Relief Provisions of the Relief Act and Within the Statute of Limitations of Six Years, and Its Action Is Not Barred Because It Did Not Sue or Appeal from the Decision of the Department Within Six Months Thereafter.

Petitioner's cause of action accrued on January 22, 1944, the date it completed the contract involved (R. 7). The statute of limitations applicable to the Court of Claims, Sec. 262, Title 28 U. S. C., provides that petitioner could sue in the Court of Claims invoking its general jurisdiction within six years after the cause of action accrued. It did sue on September 27, 1948, within the statute of limitations of six years (R. 1). The subject matter of the action is contracts (R. 6, 18-21). This subject matter comes within the general jurisdiction of the Court of Claims, Sec. 1491, Title 28 U. S. C. (formerly Sec. 250, Title 28 U. S. C.) provided as follows:

> "The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States: * * *
>
> "(4) Founded upon an express or implied contract with the United States."

This general jurisdiction of the Court was amended by application of the relief provisions of the relief Act, the purpose of which is to authorize relief in certain cases where work, supplies, or services have been furnished for the Government under contract during the war (See relief Act, App. 18). By the amendatory Act (App. 20) revising, codifying, and enacting into law Title 28 of the United

States Code, entitled "Judicial Code and Judiciary," effective September 1, 1948, petitioner could sue, as it did, under the general jurisdiction of the Court, as amended by the relief provisions of the relief Act and amendatory Act, and its action was not barred because it did not sue within six months after the decision of the department in either a Federal district Court or the Court of Claims.

The amendatory Act also repealed the requirement to appeal from a decision of a department to a Federal district Court as provided in the relief Act in claims in excess of $10,000.

We believe that the foregoing contention is sustained by the legislative history of the amendatory Act. In Senate Report No. 1559, 80th Congress, 2d Session, reporting the amendatory Act for passage, it is stated:

> "Explanation: * * * Jurisdiction and venue of cases in which amounts claimed exceed $10,000 properly belong in the Court of Claims to accord with existing statutes and legislative policy. (See 28 U. S. C. 41 (20) 1946 ed.)."

The legislative policy also includes the general jurisdictional statute, Sec. 1491, Title 28 U. S. C. Then the Report proceeds:

> "Moreover, in some cases jurisdiction may exist under both that statute and the general jurisdiction respecting claims against the United States so that cases must either be split for filing in different courts or the parties must elect to forego a possible basis for relief. Cases are just beginning to arise under the statute (App. 28, 29).

The intention of Congress was that the actions in the Court of Claims should proceed *de novo* (App. 28, 29).

Therefore, the petitioner's action commenced in the Court of Claims on September 27, 1948, under its general jurisdic-

tion, as amended by the relief provisions, and within the statute of limitations of six years, and after the expiration of six months provided in the relief statutes, is not barred. *United States* v. *St. Louis, San Francisco and Texas Ry. Co.*, 270 U. S. 1, 3; *New York Central Railroad Co.* v. *Wheeling Can Co.*, 275 U. S. 490. *United States* v. *St. Louis, San Francisco and Texas Railway Company, supra,* we think, is analogous to, and rules the case at bar. The only difference is that in that case the limitation was three years, and in the case at bar, six months. The Railway Company sued in the Court of Claims under its general jurisdiction and within the statute of limitations of six years from the date of the accrual of the action, but after the lapse of three years provided by the transportation Act, Act of February 28, 1920. The Government contended, as in the case at bar, that the action was barred. This Court decided it was not.

III

Petitioner Having Sued in the Court of Claims on September 27, 1948, Within Thirty Days After the Effective Date of the Amendatory Act, September 1, 1948, Its Cause of Action Is Not Barred Because It Did Not Sue Within Six Months After Decision of the Department on the Claim.

Sec. 38 of the Amendatory Act (App. 20, 21) provides that the Act shall become effective on September 1, 1948, and Sec. 37 of the amendatory Act (App. 20) also provides: "* * * if the claim does not exceed $10,000 in amount or suit has heretofore been brought, or is brought within thirty days after the enactment of this amendatory Act with any Federal district court * * *." It appears from the above quotation that regardless of the status of the action if the amount is less than $10,000.00 it may be brought in a Federal district court within thirty days from the effective date of the amendatory Act. (App. 20, 21.)

As the relief and amendatory Acts are highly remedial to grant relief in all cases where losses were suffered in performing war contracts, it is not reasonable to believe that Congress intended to permit a claimant whose claim did not exceed $10,000.00 to file a claim thereon within thirty days after the effective date of the amendatory Act, and to deny to a claimant of a larger claim the right to sue within thirty days. (Dissenting opinion, R. 30.)

Petitioner's contention, we think, is sustained by reference to the legislative history contained in Senate Report No. 1559, 80th Congress, 2d Session, in reporting the amendatory Act for passage (App. 28) as follows:

> "Any case heretofore brought in a district court under this section may, at the election of the petitioner to be exercised within thirty days after the enactment of this amendatory Act, be transferred to the Court of Claims for original disposition in that court." (App. 29.)

And again the Report states:

> "The suggested revision amply protects those whose cases have already been instituted in the district courts and properly provides for de novo determination by the Court of Claims notwithstanding any prior action in the district courts." (App. 29.)

The relief and amendatory Acts are highly remedial and broad in scope, which appears from the title of the Acts and the legislative history. The claims were defined as equitable claims, and the Courts to pass upon them were constituted courts of equity. Relief Act, App. 18; Amendatory Act, App. 20; House Report No. 2576, 79th Congress, 2d Session, App. 21; Senate Report No. 1669, 79th Congress, 2d Session, App. 24; Senate Report No. 1559, 80th Congress, 2d Session, App. 28. Therefore, the relief Act and amendatory Act should be broadly and liberally con-

strued to carry into effect the intent of Congress to grant relief so that the purpose of the Acts will not fail, and this includes the right of the petitioner to sue in the Court of Claims within thirty days after the effective date of the amendatory Act, as it did.

The Majority Opinion Based on a Literal Construction of the Relief and Amendatory Acts, Amending the General Jurisdiction of the Court of Claims, Thwarts and Defeats the Main Purpose of the Acts to Grant Relief.

The relief and amendatory Acts are highly remedial and should be liberally construed to grant relief, the main purpose of the Acts, instead of the literal construction of the majority opinion, which thwarts and defeats the spirit and purpose of the Acts to grant relief.

That the relief and amendatory Acts are highly remedial is ascertained by reference to the relief Act (App. 18), amendatory Act (App. 20) and legislative history (App. 21-29). The majority opinion is based on literal construction of the relief and amendatory Acts. The opinion states: "Thus, the question presented by defendant's motion is whether plaintiff has filed its petition within the time limited by the statute."

Then the opinion continues: "Not having filed such suit within six months from the action of the department plaintiff failed to register its dissatisfaction in the manner provided." Then the opinion continues: "Accordingly we conclude that plaintiff's petition to this Court comes too late." (Majority Opinion, R. 28-29.)

The literal construction of these remedial Acts by the Court is contrary to and conflicts with the rules of construction of remedial statutes established by the decisions of this Court and other authorities. The rule is that such remedial Acts must receive a liberal construction and the strict letter must yield to the spirit and purpose, to give

effect to the intention of Congress to grant relief, the main and only purpose of their enactment. *Fleischman Construction Co.* v. *United States,* 270 U. S. 349, 366; *Holy Trinity Church* v. *United States,* 143 U. S. 457, 459; *Lou Ow Bew* v. *United States,* 144 U. S. 47, 59; *Hawaii* v. *Mankichi,* 190 U. S. 197, 212.

Conclusion

Considering the general importance of the decision of the Court below embracing a majority and minority opinion in the settlement of claims arising out of the performance of contracts in the recent world war, the relief Act, the amendatory Act, as they affect the general jurisdiction of the Court of Claims and the statute of limitation, should finally be construed by this Court to prevent further confusion and uncertainty in the settlement of claims, and the unprecedented departure of the majority opinion in the strict and literal construction of the relief and amendatory Acts, rather than a liberal and broad construction required by the decisions of this Court and other authorities. It is therefore respectfully submitted that the writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

PUBLIC LAW 657—79TH CONGRESS,
CHAPTER 864—2D SESSION.
(S. 1477).

AN ACT

To authorize relief in certain cases where work, supplies, or services have been furnished for the Government under contract during the war.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where work, supplies, or services have been furnished between September 16, 1940, and August 14, 1945, under a contract or subcontract, for any department or agency of the Government which prior to the latter date was authorized to enter into contracts and amendments or modifications of contracts under section 201 of the First War Powers Act, 1941 (50 U. S. C., Supp. IV, app., sec. 611), such departments and agencies are hereby authorized, in accordance with regulations to be prescribed by the President within sixty days after the date of approval of this Act, to consider, adjust, and settle equitable claims of contractors, including subcontractors and materialmen performing work or furnishing supplies or services to the contractor or another subcontractor, for losses (not including diminution of anticipated profits) incurred between September 16, 1940, and August 14, 1945, without fault or negligence on their part in the performance of such contracts or subcontracts. Settlement of such claims shall be made or approved in each case by the head of the department or agency concerned or by a central authority therein designated by such head.

SEC. 2. (a) In arriving at a fair and equitable settlement of claims under this Act, the respective departments and agencies shall not allow any amount in excess of the amount of the net loss (less the amount of any relief granted subsequent to the establishment of such loss) on all contracts and subcontracts held by the claimant under which work,

supplies, or services were furnished for the Government between September 16, 1940, and August 14, 1945, and shall consider with respect to such contracts and subcontracts (1) action taken under the Renegotiation Act (50 U. S. C., Supp. IV, app., sec. 1191), the Contract Settlement Act of 1944 (41 U. S. C., Supp. IV, sec. 101-125), or similar legislation; (2) relief granted under section 201 of the First War Powers Act, 1941, or otherwise; and (3) relief proposed to be granted by any other department or agency under this Act. Wherever a department or agency considering a claim under this Act finds that losses under any such contract or subcontract affected the computation of the amount of excessive profits determined in a renegotiation agreement or order, and to the extent that the department or agency finds such amount was thereby reduced, claims for such losses shall not be allowed under this Act.

(b) Every claimant under this Act shall furnish to the department or agency concerned any evidence within the possession of such claimant bearing upon the matters referred to in subsection (a) of this section.

SEC. 3. Claims for losses shall not be considered unless filed with the department or agency concerned within six months after the date of approval of this Act, and shall be limited to losses with respect to which a written request for relief was filed with such department or agency on or before August 14, 1945, but a previous settlement under the First War Powers Act, 1941, or the Contract Settlement Act of 1944 shall not operate to preclude further relief otherwise allowable under this Act.

SEC. 4. Appropriations or funds available for work, supplies, or services of the character involved in the respective claims at the time of settlement thereof shall be available for payment of the settlements: *Provided,* That where no such appropriations are available, appropriations for payment of such settlements are hereby authorized.

SEC. 5. Each department and agency shall report to the Congress quarterly the name of each claimant to whom relief has been granted under this Act, together with the

amount of such relief and a brief statement of the facts and the administrative decision.

SEC. 6. Whenever any claimant under this Act is dissatisfied with the action of a department or agency of the Government in either granting or denying his claim, such claimant shall have the right within six months to file a petition with any Federal district court of competent jurisdiction, asking a determination by the court of the equities involved in such claim; and upon the filing of such a petition, the court, sitting as a court of equity, shall have jurisdiction to determine the amount, if any, to which such claimant and petitioner may be equitably entitled (not exceeding the amount which might have been allowed by the department or agency concerned under the terms of this Act) and to enter an order directing such department or agency to settle the claim in accordance with the finding of the court; and thereafter either party may appeal from the decision of the court as in other equity cases.

Approved August 7, 1946.

PUBLIC LAW 773—80TH CONGRESS.
CHAPTER 646—2D SESSION.
(H. R. 3214).

AN ACT

To revise, codify and enact into law Title 28 of the United States Code entitled "Judicial Code and Judiciary".

SEC. 37. Section 6 of the Act approved August 7, 1946 (ch. 864, 60 Stat. 903), is amended to read as follows:

"SEC. 6. Whenever any claimant under this Act is dissatisfied with the action of a department or agency of the Government in either granting or denying his claim, such claimant shall have the right within six months to file a petition with the Court of Claims or, if the claim does not exceed $10,000 in amount or suit has heretofore been brought or is brought within thirty days after the enactment of this amendatory Act, with any Federal district court of competent jurisdiction, asking a determination by the court of the equities involved in such claim; and upon

the filing of such a petition, the court, sitting as a court of equity, shall have jurisdiction to determine the amount, if any, to which such claimant and petitioner may be equitably entitled (not exceeding the amount which might have been allowed by the department or agency concerned under the terms of this Act) and to enter an order directing such department or agency to settle the claim in accordance with the finding of the court; and thereafter either party may appeal from the decision if it was rendered by a district court or petition the Supreme Court for a writ of certiorari if it was rendered by the Court of Claims, as in other cases. Any case heretofore brought in a district court under this section may, at the election of the petitioner to be exercised within thirty days after the enactment of this amendatory Act, be transferred to the Court of Claims for original disposition in that court."

SEC. 28. The provisions of this Act shall take effect on September 1, 1948.

HOUSE OF REPRESENTATIVES

79TH CONGRESS, 2D SESSION

REPORT No. 2576

WAR CONTRACT HARDSHIP CLAIMS

JULY 19, 1946.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed.

Mr. WALTER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1477]

The Committee on the Judiciary, to whom was referred the bill (S. 1477) having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, line 4, strike the date "December 7, 1941", and insert in lieu thereof "September 16, 1940".

Page 2, line 7, strike the date "December 7, 1941", and insert in lieu thereof "September 16, 1940".

Page 2, line 20, strike the date "December 7, 1941", and insert in lieu thereof "September 16, 1940".

STATEMENT

The purpose of this bill is to authorize departments and agencies of the Government, in accordance with regulations to be prescribed by the President within 60 days after the date of approval of this act, to consider, adjust, and settle equitable claims of contractors, including subcontractors and materialmen performing work or furnishing supplies or services to the contractor or another subcontractor, for losses incurred between December 7, 1941, and August 14, 1945, without fault or negligence on their part in the performance of such contracts or subcontracts.

This bill would afford financial relief to those contractors who suffered losses in the performance of war contracts in those cases where the claim would have received favorable consideration under the First War Powers Act and Executive Order No. 9001 if action had been taken by the Government prior to the capitulation of the Japanese Government. However, upon the capitulation, the position was taken by certain departments and agencies of the Government involved, that no relief should be granted under the authority which then existed, unless the action was required in order to insure continued production necessary to meet post VJ-day requirements. This was on the basis that the First War Powers Act was enacted to aid in the successful prosecution of the war and not as an aid to the contractors. As a result, a number of claims which were in process at the time of the surrender of the Japanese Government, or which had not been presented prior to such time, were denied even though the facts in a particular case would have justified favorable action if such action had been taken prior to surrender.

The committee has concluded that as a matter of sound legislative policy this bill should pass, as its adoption is the only way to afford a means of considering, adjusting and settling equitable claims of the contractors affected.

There is attached hereto and made a part of this report a statement made by Hon. Pat McCarran, chairman of the Senate Committee on the Judiciary, at the time this proposed measure was being considered by the Senate:

Mr. McCarran. Mr. President, after this bill was sent to the Senate Committee on the Judiciary, extensive hearings were held by the committee. We went into a great many phases of the question. Many persons came before the committee and recited the circumstances surrounding their particular cases. The General Accounting Office raised some questions as to the language of the then existing bill. After the hearings were concluded, we submitted the matter for reconsideration from the standpoint of redrafting the language of the bill. The language was carefully redrafted so as to limit it in every respect and to protect it in every respect. The language now contained in the bill is what was approved and is approved by the General Accounting Office.

If there was ever a bill in which there was merit and justice and for which there was a need on the ground of fair play and an attempt to render justice to these groups who have tried to serve and have served the Government during the war, this is one bill which in its present form is in that category.

I respectfully suggest that the bill should be considered and passed at this time. I am glad it is to be taken up ahead of the consideration of the measures on the calendar, so that it may be passed by the Senate and may go to the House of Representatives and may receive approval by the House before there is a final adjournment of the Congress.

Mr. President, let me say that this matter shows the difference between one department which approves and goes forward with adjustments and another department which disapproves and says that after VJ-day it has no right to go forward with adjustments. Those were the two horns of the dilemma. In other words, one group were paid and

another group were not paid; and those who suffered had to come to Congress and obtain specific provision for their relief, as set out in this bill.

WAR CONTRACT HARDSHIP CLAIMS

July 9 (legislative day, July 5), 1946.—Ordered to be printed

Mr. McCarran, from the Committee on the Judiciary, submitted the following

REPORT No. 1669

[To accompany S. 1477]

The Committee on the Judiciary, to whom was referred the bill (S. 1477) to authorize relief in certain cases where supplies or services have been furnished for the Government during the war, having considered the same, report the bill to the Senate favorably with amendments, and recommend that the bill as amended do pass.

Public hearings on this bill were held on April 12 and 13, 1946, by a subcommittee of the Senate Committee on the Judiciary.

AMENDMENTS

Committee amendment No. 1: Strike out all after the enacting clause and insert the following:

That where work, supplies, or services have been furnished between December 7, 1941, and August 14, 1945, under a contract or subcontract, for any department or agency of the Government which prior to the latter date was authorized to enter into contracts and amendments or modifications of contracts under section 201 of the First War Powers Act, 1941 (50 U. S. C., Supp. IV, App. sec. 611), such departments and agencies are hereby authorized, in accordance with regulations to be prescribed by the President within 60 days after the date of approval of this Act, to consider, adjust and settle equitable claims of contractors, including subcontractors and materialmen performing work or furnishing supplies or services to the contractor or another subcontractor, for losses (not including diminu-

tion of anticipated profits incurred between December 7, 1941, and August 14, 1945, without fault or negligence on their part in the performance of such contracts or subcontracts. Settlement of such claims shall be made or approved in each case by the head of the department or agency concerned or by a central authority therein designated by such head.

SEC. 2. (a) In arriving at a fair and equitable settlement of claims under this Act, the respective departments and agencies shall not allow any amount in excess of the amount of the net loss (less the amount of any relief granted subsequent to the establishment of such loss) on all contracts and subcontracts held by the claimant under which work, supplies, or services were furnished for the Government between December 7, 1941, and August 14, 1945, and shall consider with respect to such contracts and subcontracts (1) action taken under the Renegotiation Act (50 U. S. C., Supp. IV, App., sec. 1191), the Contract Settlement Act of 1944 (41 U. S. C., Supp. IV, secs. 101-125), or similar legislation; (2) relief granted under section 201 of the First War Powers Act, 1941, or otherwise; and (3) relief proposed to be granted by any other department or agency under this Act. Wherever a department or agency considering a claim under this Act finds that losses under any such contract or subcontract affected the computation of the amount of excessive profits determined in a renegotiation agreement or order, and to the extent that the department or agency finds such amount was thereby reduced claims for such losses shall not be allowed under this Act.

(b) Every claimant under this Act shall furnish to the department or agency concerned any evidence within the possession of such claimant bearing upon the matters referred to in subsection (a) of this section.

SEC. 3. Claims for losses shall not be considered unless filed with the department or agency concerned within six months after the date of approval of this Act, and shall be limited to losses with respect to which a written request for relief was filed with such department or agency on or before August 14, 1945, but a previous settlement under the

First War Powers Act, 1941, or the Contract Settlement Act of 1944 shall not operate to preclude further relief otherwise allowable under this Act.

SEC. 4. Appropriations or funds available for work, supplies, or services of the character involved in the respective claims at the time of settlement thereof shall be available for payment of the settlements: *Provided,* That where no such appropriations are available, appropriations for payment of such settlements are hereby authorized.

SEC. 5. Each department and agency shall report to the Congress quarterly the name of each claimant to whom relief has been granted under this Act, together with the amount of such relief and a brief statement of the facts and the administrative decision.

SEC. 6. Whenever any claimant under this Act is dissatisfied with the action of a department or agency of the Government in either granting or denying his claim, such claimant shall have the right within 6 months to file a petition with any Federal district court of competent jurisdiction, asking a determination by the court of the equities involved in such claim; and upon the filing of such a petition, the court, sitting as a court of equity, shall have jurisdiction to determine the amount, if any, to which such claimant and petitioner may be equitably entitled (not exceeding the amount which might have been allowed by the department or agency concerned under the terms of this Act), and to enter an order directing such department or agency to settle the claim in accordance with the finding of the court; and thereafter either party may appeal from the decision of the court as in other equity cases.

Committee amendment No. 2: Amend the title of the bill to read as follows:

A bill to authorize relief in certain cases where work, supplies, or services have been furnished for the Government under contracts during the war.

STATEMENT

The purpose of this bill is to authorize departments and agencies of the Government, in accordance with regula-

tions to be prescribed by the President within 60 days after the date of approval of this act, to consider, adjust, and settle equitable claims of contractors, including subcontractors and materialmen performing work or furnishing supplies or services to the contractor or another subcontractor, for losses incurred between December 7, 1941, and August 14, 1945, without fault or negligence on their part in the performance of such contracts or subcontracts.

During the course of the hearings, representatives of the War Department, Navy Department, General Accounting Office, and a number of private contracting firms, appeared and testified. Certain objections to the bill, as introduced, were raised by those who testified and the bill was amended in committee and was ordered reported out favorably, as amended, with a view to meeting the objections which were made.

This bill, as amended, would afford financial relief to those contractors who suffered losses in the performance of war contracts in those cases where the claim would have received favorable consideration under the First War Powers Act and Executive Order No. 9001 if action had been taken by the Government prior to the capitulation of the Japanese Government. However, upon the capitulation, the position was taken by certain departments and agencies of the Government involved, that no relief should be granted under the authority which then existed, unless the action was required in order to insure continued production necessary to meet post VJ-day requirements. This was on the basis that the First War Powers Act was enacted to aid in the successful prosecution of the war and not as an aid to the contractors. As a result, a number of claims which were in process at the time of the surrender of the Japanese Government, or which had not been presented prior to such time, were denied even though the facts in a particular case would have justified favorable action if such action had been taken prior to surrender.

The committee has concluded that as a matter of sound legislative policy this bill, as amended, should pass, as its adoption is the only way to afford a means of considering, adjusting and settling equitable claims of the contractors affected.

CALENDAR NO. 1608

SENATE

80TH CONGRESS, 2D SESSION
(REPORT No. 1559)

REVISING, CODIFYING, AND ENACTING INTO LAW TITLE 28 OF THE UNITED STATES CODE, ENTITLED "JUDICIAL CODE AND JUDICIARY"

June 9 (legislative day, June 1), 1948.—Ordered to be printed

Mr. Wiley, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 3214]

Amendment No. 67. On page 173, near bottom of page, insert the following section:

SEC. 37. Section 6 of the Act approved August 7, 1946 (ch. 864, 60 Stat. 903), is amended to read as follows:

"SEC. 6. Whenever any claimant under this Act is dissatisfied with the action of a department or agency of the Government in either granting or denying his claim, such claimant shall have the right within six months to file a petition with the Court of Claims or, if the claim does not exceed $10,000 in amount or suit has heretofore been brought or is brought within thirty days after the enactment of this amendatory act, with any Federal district court of competent jurisdiction, asking a determination by the court of the equities involved in such claim; and upon the filing of such a petition, the court, sitting as a court of equity, shall have jurisdiction to determine the amount, if any, to which such claimant and petitioner may be equitably entitled (not exceeding the amount which might have been allowed by the department or agency concerned under the

terms of this Act) and to enter an order directing such department or agency to settle the claim in accordance with the finding of the court; and thereafter either party may appeal from the decision if it was rendered by a district court or petition the Supreme Court for a writ of certiorari if it was rendered by the Court of Claims, as in other cases. Any case heretofore brought in a district court under this section may, at the election of the petitioner to be exercised within thirty days after the enactment of this amendatory Act, be transferred to the Court of Claims for original disposition in that court."

Explanation: Public Law No. 657 of the Seventy-ninth Congress provides for the determination of war claims incurred without fault or negligence where any form of contract relief had been requested during the war and despite former administrative denial or settlement thereof. Jurisdiction and venue of cases in which amounts claimed exceed $10,000 properly belong in the Court of Claims to accord with existing statutes and legislative policy. (See 28 U. S. C. 41 (20), 1946 ed.) Moreover, in some cases jurisdiction may exist under both that statute and the general jurisdiction respecting claims against the United States so that cases must either be split up for filing in different courts or the parties must elect to forego a possible basis for relief. Cases are just beginning to arise under the statute. The suggested revision amply protects those whose cases have already been instituted in the district courts and properly provides for de novo determination by the Court of Claims notwithstanding any prior action by the district courts.

Amendment No. 68. On page 173, near bottom of page, insert the following section:

SEC. 38. The provisions of this Act shall take effect on September 1, 1948.

Explanation: This amendment sets the effective date of H. R. 3214 as September 1, 1948, in order to provide a reasonable time for the bench and bar to familiarize themselves with the provisions of the act.

IN THE UNITED STATES COURT OF CLAIMS

(Issued May 27, 1949)

MEMORANDUM AND ORDER AS TO PROCEDURE IN LUCAS ACT CASES

Per CURIAM:

There are now pending in the Court of Claims a number of cases brought pursuant to the Lucas Act (60 Stat. 902). Section 1 of the Act, in describing the type of claims which may be considered, describes them as "equitable claims of contractors, including subcontractors and materialmen performing work or furnishing supplies or services to the contractor or another subcontractor, *for losses* (not including diminution of anticipated profits) *incurred between September 16, 1940, and August 14, 1945,* without fault or negligence on their part in the performance of such contracts or subcontracts." [Emphasis supplied.]

Section 2 of the Act, in prescribing the amount which may be allowed in settlement of claims under the Act, provides that such allowance shall not be "*in excess of the amount of the net loss* (less the amount of any relief granted subsequent to the establishment of such loss) *on all contracts and subcontracts held by the claimant under which work, supplies, or services were furnished for the Government between September 16, 1940, and August 14, 1945,*" and this section also provides that consideration shall be given to "(1) action taken under the Renegotiation Act (50 U. S. C., Supp. IV, app., sec. 1191), the Contract Settlement Act of 1944 (41 U. S. C., Supp. IV, sec. 101-125), or similar legislation; (2) relief granted under section 201 of the First War Powers Act, 1941, or otherwise; and (3) relief proposed to be granted by any other department or agency under this Act." [Emphasis supplied.]

It is apparent that in most of the cases, a substantial portion of the proof to be submitted in support of the claims will be based on books of account or other records and will involve the preparation of detailed audit reports and supporting explanations from the books and records of plaintiffs with respect to work, supplies, or services furnished for the Government under the class of contracts and subcon-

tracts referred to in the Act. In order to secure the expeditious trial of these cases and to save time and expense to both parties, it is the opinion of the Court that it will usually be necessary for the Commissioner to invoke the provisions of Rule 40½(c) of this Court, and, therefore,

It is ordered that in all Lucas Act cases, except where the Commissioner determines that Rule 40½(c) shall not be applied, the procedure shall be as follows:

(1) Prior to the taking of any proof and as soon as possible after notice from the Commissioner, each plaintiff shall prepare and furnish to defendant's counsel a detailed audit report with supporting schedules and with specific references to the books or records from which the figures in the audit were taken.

(2) Such audit shall cover all receipts and expenditures relating to the contracts referred to in both Sections 1 and 2 of the Lucas Act even though some of the transactions relating to such receipts and expenditures may have occurred prior to September 16, 1940, or subsequent to August 14, 1945. With respect to the contracts sued upon under Section 1 of the Lucas Act, plaintiff shall so arrange his audit reports and schedules as to reflect the losses incurred between September 16, 1940, and August 14, 1945, or he may attach separate schedules showing the losses incurred between those dates.

(3) The audit, supporting schedules, and explanations should be sufficiently complete and in such detail that, as far as practicable, proof at the trial with respect to the amount of losses claimed may be confined to the matters set out in the audit, schedules, and explanations.

(4) In the determination of indirect costs to be included in the audit as a part of the cost of performing any contract or subcontract, those in charge of preparing the audit may find it useful to refer to Section 101.7 of Executive Order 9786 (11 Fed. Reg. 11553).

(5) In all cases where a detailed audit, which complies with the requirements herein stated, has already been prepared and furnished by plaintiff to a department or agency

of the Government and a copy of such audit is available to or is otherwise furnished to counsel for defendant, no other audit need be furnished by plaintiff.

(6) At the time the audit, schedules, and explanations are furnished by counsel for plaintiff to defendant, plaintiff's counsel shall notify the Commissioner of that fact and if counsel for defendant desires to make examination of the books and records from which such audit was taken, such examination must be made before trial. Promptly after the receipt of plaintiff's audit, defendant shall notify the Commissioner whether or not it desires to make an examination of such books and records. In the event the defendant elects to make such examination, the Commissioner may then require the plaintiff to make all books and records pertinent to the claim or any part thereof available for examination by the defendant in advance of the trial and may fix a reasonable time for such examination.

(7) All disputes between the parties with respect to the procedure to be followed in making the audit to be furnished by plaintiff and the examination of plaintiff's records by defendant shall be resolved by the Commissioner prior to trial.

Should any legal question arise, before the audit herein provided for is completed by both parties, which may substantially affect any phase of the audit from the standpoint of time or expense, such matter may be submitted by counsel to the Commissioner for instructions.

(8) In all cases where audits have been furnished by the plaintiff and an examination of the books and records has thereafter been made by the defendant, it is contemplated that the Commissioner will hold a pre-trial conference for the purpose of avoiding unnecessary proof of facts or figures which have been mutually agreed upon as the result of such audit and examination.

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 211

CENTAUR CONSTRUCTION COMPANY, INC.,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The majority and dissenting opinions in the Court of Claims (R. 26-30) are reported at 83 F. Supp. 351.

JURISDICTION

The judgment of the Court of Claims was entered on April 4, 1949 (R. 30). A motion for a new trial was filed on April 25, 1949, and overruled on May 2, 1949 (R. 30). The petition for a writ of certiorari was filed on July 26, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. 1255.

QUESTION PRESENTED

Whether petitioner's claim, created by the Relief Act (Act of August 7, 1946, c. 864, 60 Stat. 902 *infra,* pp. 9-10), and terminated under that Act upon petitioner's failure to sue within six months of administrative denial, was revived by the amendment of June 25, 1948 (c. 646, 62 Stat. 869, 992, *infra,* pp. 10-11).

STATUTES INVOLVED

Pertinent statutory provisions are set forth in the Appendix at pp. 9-11.

STATEMENT

So far as material here, petitioner's allegations in the court below, uncontroverted by respondent's motion to dismiss, were as follows:

On or about March 1, 1941, petitioner, a New York corporation engaged in construction work and engineering, entered into a written contract with the United States for the construction of shipyards and dry dock facilities at the United States Coast Guard Depot, Curtis Bay, Maryland (R. 1, 6). Due to the increased cost of labor and materials resulting from the rearmament program prior to December 7, 1941, and from the demands of war thereafter, petitioner's expenditures in performance of the contract substantially exceeded its expectations (R. 7-9, 10-15).

In an application to the Coast Guard's contracting officer, dated October 26, 1942, petitioner, claiming losses due to the unexpectedly high cost

of performing its contract, sought relief under the First War Powers Act[1] (R. 16). The Application was denied, and, on appeal by petitioner to the Secretary of the Navy, this determination was affirmed (R. 16).

On February 7, 1947, petitioner filed a claim for $311,421.78, its alleged contract losses, with the Commandant of the United States Coast Guard, relying now upon the Act of August 7, 1946 (c. 864, 60 Stat. 902-903, *infra,* pp. 9-10; referred to herein, as in the petition for certiorari, as the "Relief Act") (R. 16, 18-24). On April 21, 1947, this claim was denied on the ground that it had already been finally adjudicated by the Secretary of the Navy in his disposition of the application of October 26, 1942 (R. 16, 24-25).

The Relief Act conferred upon a contractor dissatisfied with administrative action on his claim for relief "the right within six months to file a petition with any Federal district court of competent jurisdiction, asking a determination by the court of the equities involved in such claim * * *." This

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[1] Act of December 18, 1941, c. 593, Title II, § 201, 55 Stat. 839, 50 U. S. C. App. 611, providing in pertinent part: "The President may authorize any department or agency of the Government exercising functions in connection with the prosecution of the war effort, in accordance with regulations prescribed by the President for the protection of the interests of the Government, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made and to make advance, progress and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts whenever he deems such action would facilitate the prosecution of the war * * *."

provision was amended by the Act of June 25, 1948 (*infra*, pp. 10-11) to give the Court of Claims jurisdiction over such suits and to conform them to ordinary Tucker Act proceedings by limiting concurrent jurisdiction of the district courts to $10,000.

On September 27, 1948, almost seventeen months after rejection of its claim of February 7, 1947, petitioner brought this action seeking relief under the foregoing statute (R. 1-17). Granting respondent's motion to dismiss, the court held (two judges dissenting) that petitioner's right of action, created by the Relief Act, had expired upon petitioner's failure to comply with the Act's requirement that suit be brought within six months after administrative disposition of its claim (R. 26-29).

ARGUMENT

As petitioner points out (Pet. 3), its application to the Coast Guard Commandant for relief from its contract losses was made pursuant to the Relief Act of August 7, 1946. That Act prescribed a limit of six months on the period during which the right to court review would be available. Its claim having been denied on April 21, 1947, petitioner had until October 21, 1947, to sue in a district court. For reasons neither known nor relevant here, petitioner did not bring this action until September 27, 1948, almost seventeen months after denial of its claim and over eleven months after its right to sue had expired. We submit that nothing in the petition for certiorari casts the slightest

doubt on the correctness of the holding below that this suit was barred.

1. Much of petitioner's attack on the judgment below (Pet. 14-17) amounts to a contention that the amendment of June 25, 1948, had the effect of reviving claims already extinguished by the Relief Act's six-month limitation.[2] The controlling portion of that statute, with the language added by the amendment italicized, reads as follows:

> Whenever any claimant under this Act is dissatisfied with the action of a department or agency of the Government in either granting or denying his claim, such claimant shall have the right within six months to file a petition *with the Court of Claims or, if the claim does not exceed $10,000 in amount or suit has heretofore been brought or is brought within thirty days after the enactment of this amendatory act,* with any Federal district court of competent jurisdiction, asking a determination by the court of the equities involved in such claim; * * *

On the face of the statute, it appears that the amendment provides merely that cases involving over $10,000 must be brought in the Court of Claims instead of the district courts; the six months limitation is retained without alteration. The language

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[2] Statutory limitations of the type in question are not merely "procedural," but go to the substance of the rights simultaneously created and limited. "Under such a statute the lapse of time not only bars the remedy but destroys the liability." *Phillips Co.* v. *Grand Trunk Western Ry. Co.*, 236 U.S. 662, 667; *Kansas City So. Ry.* v. *Wolf*, 261 U.S. 133; *William Danzer Co.* v. *Gulf R. R.*, 268 U.S. 633.

and history of the amendment[3] make clear that the amendment's only purpose was to bring jurisdiction under the Relief Act into conformity with jurisdictional provisions generally applicable to suits against the United States. As necessary corollaries of this change, the amendment makes provision for a period of transition during which suits for over $10,000 may be brought (for thirty days) or continued in the district courts, and permits transfer of pending suits from the district courts to the Court of Claims. There is nothing in the amendatory language to suggest even remotely that Congress intended the re-creation of claims already terminated under the predecessor law, which differed only in providing for another forum. Cf. *Fullerton Co.* v. *Northern Pacific,* 266 U.S. 435, 437; *Link* v. *Receivers of Seaboard Air Line Ry. Co.,* 73 F. 2d 149 (C.A. 4).

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[3] S. Rep. No. 1559, 80th Cong., 2d sess., explaining the amendment as follows (at p. 14): "Public Law No. 657 of the Seventy-ninth Congress [the Relief Act of August 7, 1946] provides for the determination of war claims incurred without fault or negligence where any form of contract relief had been requested during the war and despite former administrative denial or settlement thereof. Jurisdiction and venue of cases in which amounts claimed exceed $10,000 properly belong in the Court of Claims to accord with existing statutes and legislative policy. (See 28 U.S.C. 41 (20), 1946 ed.). Moreover, in some cases jurisdiction may exist under both that statute and the general jurisdiction respecting claims against the United States so that cases must either be split up for filing in different courts or the parties must elect to forego a possible basis for relief. Cases are just beginning to arise under the statute. The suggested revision amply protects those whose cases have already been instituted in the district courts and properly provides for de novo determination by the Court of Claims notwithstanding any prior action by the district courts."

Petitioner's reliance upon the thirty day clause is plainly ill-founded. For that applies only to suits brought in the district courts, whereas this suit was instituted in the Court of Claims. In any event, that clause merely afforded a period of grace during which suits for over $10,000 could continue to be brought in the district courts; it did not create any exception to the unchanged provision that suits must be brought within six months of agency action.

2. Petitioner suggests (Pet. 12-14) that, since "the subject matter of the action is contracts," the general statute (28 U.S.C. 2501, *infra,* p. 11) limiting the jurisdiction of the Court of Claims to claims sued upon within six years of accrual applies. But petitioner sued, not upon its contract, but upon a statute affording relief from the contract terms under certain explicit conditions. One of these conditions, already discussed, was that suit be brought within six months of administrative denial of relief. This specific provision for cases under a special statute clearly is controlling as against the general time limitation. *United States* v. *A. S. Kreider Co.,* 313 U.S. 443; *Christie-Street Commission Co.* v. *United States,* 136 Fed. 326 (C.A. 8). Petitioner's alleged right, destroyed by failure to sue within the prescribed period, is obviously not revived by the fact that the Court of Claims has power to adjudicate subsisting claims up to six years after their inception. *United States* v. *St. Louis, S. F. & T. Ry. Co.,* 270 U.S. 1,

upon which petitioner primarily relies, held only that the special statute involved was not to be applied retroactively, and accordingly has no bearing here.

3. Petitioner asserts (Pet. 5-6) that review of the decision below is warranted by the fact that a number of cases under the Relief Act are now pending before the Court of Claims. But the fact that there are other suits under the Relief Act is, of course, no indication that other claimants will let the six-month limitation expire before bringing suit. This suit is the only one so far in which any such situation has arisen.

CONCLUSION

The decision below is correct, and there is no conflict of decisions. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER, 1949.

APPENDIX

The "Relief Act," Act of August 7, 1946, c. 954, 60 Stat. 902-903, provided:

That where work, supplies, or services have been furnished between September 16, 1940, and August 14, 1945, under a contract or subcontract, for any department or agency of the Government which prior to the latter date was authorized to enter into contracts and amendments or modifications of contracts under section 201 of the First War Powers Act, 1941 (50 U.S.C., Supp. IV, app., sec. 611), such departments and agencies are hereby authorized, in accordance with regulations to be prescribed by the President within sixty days after the date of approval of this Act, to consider, adjust, and settle equitable claims of contractors, including subcontractors and materialmen performing work or furnishing supplies or services to the contractor or another subcontractor, for losses (not including diminution of anticipated profits) incurred between September 16, 1940, and August 14, 1945, without fault or negligence on their part in the performance of such contracts or subcontracts. Settlement of such claims shall be made or approved in each case by the head of the department or agency concerned or by a central authority therein designated by such head.

* * * * *

SEC. 6. Whenever any claimant under this Act is dissatisfied with the action of a de-

partment or agency of the Government in either granting or denying his claim, such claimant shall have the right within six months to file a petition with any Federal district court of competent jurisdiction, asking a determination by the court of the equities involved in such claim; and upon the filing of such a petition, the court, sitting as a court of equity, shall have jurisdiction to determine the amount, if any, to which such claimant and petitioner may be equitably entitled (not exceeding the amount which might have been allowed by the department or agency concerned under the terms of this Act) and to enter an order directing such department or agency to settle the claim in accordance with the finding of the court; and thereafter either party may appeal from the decision of the court as in other equity cases.

Section 6 of the foregoing Act was amended by Section 37 of the Act of June 25, 1948, c. 646, 62 Stat. 869, 992 to read as follows (Language added by the amendment appears here in italics; four unimportant words omitted in the amendment are bracketed. Except for the changes thus indicated, the original language remains unaltered):

SEC. 6. Whenever any claimant under this Act is dissatisfied with the action of a department or agency of the Government in either granting or denying his claim, such claimant shall have the right within six months to file a petition *with the Court of Claims, or if the claim does not exceed $10,000 in amount or suit has heretofore been brought or is*

brought within thirty days after the enactment of this amendatory act, with any Federal district court of competent jurisdiction, asking a determination by the court of the equities involved in such claim; and upon the filing of such a petition, the court sitting as a court of equity, shall have jurisdiction to determine the amount, if any, to which such claimant and petitioner may be equitably entitled (not exceeding the amount which might have been allowed by the department or agency concerned under the terms of this Act) and to enter an order directing such department or agency to settle the claim in accordance with the finding of the court; and thereafter either party may appeal from the decision [of the court] *if it was rendered by a district court or petition the Supreme Court for a writ of certiorari if it was rendered by the Court of Claims*, as in other [equity] cases. *Any case heretofore brought in a district court under this section may, at the election of the petitioner to be exercised within thirty days after the enactment of this amendatory Act, be transferred to the Court of Claims for original disposition in that court.*

28 U.S.C. 2501 provides:

Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed * * * within six years after such claim first accrues.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 211

CENTAUR CONSTRUCTION COMPANY, INC.,
Petitioner,

vs.

THE UNITED STATES,
Respondent

PETITIONER'S REPLY BRIEF TO RESPONDENT'S BRIEF IN OPPOSITION

Counsel for petitioner think the case at bar is distinguishable from the authorities cited by respondent in its brief, page 5, footnote 2, *Phillips Co.* v. *Grand Trunk Ry. Co.*, 236 U. S. 662, 667, and following authorities.

Those authorities merely involved the right to collect overcharges on freight rates under the Interstate Commerce Act, which required that application must be made to the Interstate Commerce Commission within two years after the accrual of the claim. After the allowance of the claim by the Commission the applicant then had the right to sue the railway companies in the United States Courts within one year from the date the order was made by the Commission. In these three cases application was made to

the Commission for the overcharges and suits were brought in the United States Courts against the carriers to enforce collection. The distinction is that in the case at bar, suit was brought in the United States Court of Claims under its general jurisdiction as amended by the relief provisions of the Relief Act. (See Petition, pars. 2, 3, R. 1; pars. 4, 5, R. 2, 3, 4, 11-30, R. 6-20).

In the authorities cited by respondent no amendatory act making applicable relief provisions of a relief act to the general jurisdiction of the Court of Claims, as in the case at bar, was involved. In other words, if there had not been any amendatory Act in the case at bar and just the relief Act, the situation would have been somewhat similar to respondent's authorities, but here we have the relief Act, the amendatory Act and the general jurisdictional statute of the Court of Claims which are in pari materia and must be taken together as if they were one law. *United States* v. *Stewart*, 311 U. S. 60, 64; and *United States* v. *Freeman*, 3 How. (U. S.) 556, 564.

The authorities cited by respondent involve the Interstate Commerce Act of June 29, 1906, Sec. 16, par. 3, Title 49 U. S. C. This same Interstate Commerce Act as amended by the Transportation Act of February 28, 1920 was involved in *United States* v. *St. Louis, S. F. & T. Ry. Co.*, 270 U. S. 1, and cited in petitioner's original brief, p. 14. The railway sued in the Court of Claims under its general jurisdiction and within the statute of limitations of six years from the date of the accrual of the cause of action but after the lapse of three years provided by the transportation Act. This Court held that the three-year limitation did not apply and that the action was not barred. Also see *Schaff, Receiver, Missouri, Kansas & Texas Ry. Co.* v. *United States*, 59 Ct. Cls. 318; and *Central Railroad of N. J.* v. *United States*, 60 Ct. Cls. 578.

Respondent in its brief discusses the reviving and recreation of the claim. Even if the effect of the legislation of the amendatory Act, in the case at bar, is to revive a claim or action, Congress has the power to do so. *Allen Pope* v. *United States,* 323 U. S. 1; *United States* v. *Realty Co.,* 163 U. S. 427; *Roberts* v. *United States,* 92 U. S. 41; *United States* v. *Cook,* 257 U. S. 523; and *Cincinnati Soap Co.* v. *United States,* 301 U. S. 308, 314.

Respectfully submitted,

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